



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/582,667

12/14/2006

Guifen Xu

SHA 141NP

4718

23995

7590

07/31/2008

RABIN & Berdo, PC

1101 14TH STREET, NW

SUITE 500

WASHINGTON, DC 20005

EXAMINER

CHEN, CATHERYNE

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

07/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/582,667	Applicant(s) XU, GUIFEN	
	Examiner CATHERYNE CHEN	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,13-15 and 33-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 13-15, 33-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Amendments filed on March 14, 2008 has been received and entered.

Currently, Claims 1-2, 13-15, 33-51 are pending. Claims 1-2, 13-15, 33-51 are examined on the merits. Claims 3-12, 16-32 are canceled.

Election/Restrictions

Applicant's election without traverse of group I (Claims 1-2, 13-15, 33-35, newly added 36-51) in the reply filed on Aug. 20, 2007 is acknowledged.

Response to Arguments

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 13-15, 33-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu (CN 1168278 A, translation provided) for the reasons set forth in the previous Office Action, which is set forth below. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive.

Applicant argues that there is no teaching or suggestion to combine the ingredients and amount for treatment of cancers are not obvious.

The reference does teach all of the claimed ingredients in one composition. Hu teaches preparation of Chinese medicine with each of the following: the active ingredients are used at 0.01-99.99%, specifically the cochinchina momordica seed is used at 5-18g, hydnocarpus is also known as chaulmoogra (see

Art Unit: 1655

<http://en.wikipedia.org/wiki/Hydnocarpus>) at 3-18g, pangolin at 2-6 g, rhubarb (rhizome rhei) at 5-20g, licorice at 15-25g (see translation, page 2, Claim 1), which give a ratio of about 2.5: 1.5: 1: 2.5: 7.5, respectively. Thus, the reference does specifically teach adding the ingredients in similar range amounts claimed by applicant for the treatment of the specified types of cancer.

The cancers cited by the reference are gastric cancer, liver cancer, breast cancer, bone cancer, skin cancer, cerebral tumor, lung cancer, and similar diseases (Abstract), intestinal cancer (translation, page 10, Table 3), stomach cancer (translation, page 16, IX. Test Result), cervical cancer (translation, page 19, IV. Selection of Test Method).

Applicant argues that the reference does not teach consisting of hydnocarpus, cochinchina momordica, pangolin, rhubarb, and licorice only.

In Hu, Example 6 on page 37 of the translation, the anti-tumor capsule contains only 150 g mormordica cochinchinosi, 150 g gynocardia odorata, 150 g pangolin, 150 g rhubarb, and 150 g sweet root. The ratios of the ingredients are 1:1:1:1:1.

Gynocardia odorata is also known as chaulmoogra (see <http://www.henriettesherbal.com/plants/gynocardia-odorata>), which is hydnocarpus (see <http://en.wikipedia.org/wiki/Hydnocarpus>). Sweet root is also known as licorice (see <http://www.drugdigest.org/DD/DVH/HerbsWho/0,3923,4037%7CSweet%2BRoot,00.htm>). Thus, the composition is properly taught by the reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1655

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Examiner Art Unit 1655

/Susan Coe Hoffman/
Primary Examiner, Art Unit 1655